UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

DOMINICK VIOLA

Plaintiff,

-against-

CORRECTIONS OFFICER ADAM DIXSON, CORRECTIONS OFFICER CHRISTOPHER GAMMONE; CORRECTIONS OFFICER HERNANDO SALAZAR and SERGEANT M. COOPER

Defendants.

---X

Docket No.

COMPLAINT AND JURY DEMAND

Plaintiff, complaining of the defendants, by his attorneys, FRANZBLAU DRATCH, P.C. respectfully alleges upon information and belief as follows:

NATURE OF THE ACTION

1. This civil rights action arises from the defendants unlawful physical assault, abuse, battery and harassment of plaintiff, and use of intimidation and excessive force upon plaintiff on November 19, 2013;

2. Plaintiff seeks compensatory and punitive damages for violation of plaintiff s civil rights pursuant to 42 U.S.C. §§1981, 1983, 1985 and 1986 and an award of costs, disbursements and attorneys fees under 42 U.S.C. §1988.

JURISDICTION

3. This action is predicated upon violations of plaintiff s Civil Rights protected under the United States Constitution inclusive of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and actionable pursuant to 42 U.S.C. §§1981, 1983, 1985 and 1986;

VENUE

4. That Venue for this action is placed in this District as the incident occurred at Downstate Correctional Facility located in Dutchess County.

5. Plaintiff has complied with the conditions of the Prison Litigation Reform Act prior to commencing suit.

PARTIES

6. Plaintiff, Dominick Viola, was and continues to be a resident of the State of New York

7. At all times relevant, each of the defendants, CORRECTIONS OFFICER ADAM DIXSON, CORRECTIONS OFFICERT CHRISTOPHER GAMMONE; CORRECTIONS OFFICER HERNANDO SALAZAR and SERGEANT M. COOPER were correctional officers at Downstate Correctional Facility who were involved in an excessive Use of Force on plaintiff on November 19, 2013 and are being sued in their individual capacities, (hereinafter collectively referred to as "defendants")

FACTS UNDERLYING PLAINTIFF'S CLAIMS FOR RELIEF

8. That on or about November 19, 2013, at approximately 7:30 p.m of that day, plaintiff, was standing in line waiting to utilize the telephone at Downstate Correctional Facility when, without warning, was brutally beaten, assaulted and battered plaintiff about his body and head by defendants.

9. That the physical assault and battery was unjustified and excessive by the individual defendants as plaintiff did not commit any act which would provoke such a violent response from the defendants.

10. Plaintiff sustained great fear, emotional harm and physical injury as a result of the aforesaid, assault, battery, intimidation and abusive behavior

perpetrated upon him by defendants as a result of the afore-referenced events including anxiety and stress and physical injuries which required medical treatment.

11. Plaintiff suffered from a loss of liberty and deprivation of civil rights protected by the United States as a result of the afore-referenced events.

FIRST CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S CIVIL RIGHTS

12. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs with the same force and effect as if set forth more fully herein.

13. As a result of the aforedescribed actions, including the use of excessive physical force, the defendants, individually deprived plaintiff, of the rights, privileges and immunities secured by the Constitution and laws of the United States

14. As a result of the aforedescribed actions, these defendants individually deprived plaintiff, of the right to be free from cruel and unusual punishment and unreasonable seizures secured by the Constitution and laws of the United States and the Fourth, Eighth and Fourteenth Amendments.

15. As a result of the aforedescribed actions, including the patently offensive physical conduct and threatening remarks made by defendants during the aforementioned use of excessive force and intentional infliction of emotional harm upon plaintiff, these defendants individually deprived plaintiff, of Equal Protection under the Law secured by the Constitution and laws of the United States and the Fourteenth Amendment.

16. The amount and type of physical force used upon plaintiff by these defendants was unnecessary, improper, excessive and not reasonably justified under any circumstances.

17. The aforedescribed constitutional violations are all actionable under

and pursuant to 42 U.S.C. §§ 1981, 1983, 1985 and 1986.

18. The aforedescribed acts of these defendants were intentional, willful, malicious and performed with reckless disregard for and deliberate indifference to plaintiff's rights and physical well being.

19. The aforementioned use of force and infliction of emotional harm caused immediate injury in the form of physical and emotional pain, suffering, shock, fright, humiliation, embarrassment, disgrace and deprivation of plaintiff s constitutional rights.

20. As a result of the foregoing, plaintiff has suffered damages;

WHEREFORE, plaintiff demands judgment against the defendants for the following relief:

(A) Damages

(B) Costs;

(C) Interest;

(D) Attorney's Fees;

(E) Punitive Damages

(F) for such other relief as the Court deems just and proper

JURY DEMAND

Plaintiff hereby demands a jury on a all issues.

DATED: New York, New York
August 22, 2017

FRANZBLAU DRATCH, P.C.

By: BRIAN M. DRATCH
Attorneys for Plaintiff
233 Broadway, Suite 1800
New York, NY 10279
(212) 571-1808